

David Waldo, Chief
Public Water Supply Section
Kansas Department of Health and Environment
1000 SW Jackson, Suite 420
Topeka, KS 66612

Dear Mr. Waldo:

Re: Public Water Systems Out of Compliance for Nitrates
Pretty Prairie Public Water System
PWS ID: KS2015501

We recently received correspondence from the city of Pretty Prairie, because its System has a documented history of exceeding the 10 ppm nitrate MCL. We provided you with a copy of our response to the city of Pretty Prairie, dated May 16, 2008, in deference to KDHE as the primacy agency for enforcement of drinking water violations in Kansas. In our May 16th letter to the city of Pretty Prairie about its System, we clarified that the provision of bottled water to the public is not an acceptable long-term solution to nitrate violations, and does not exempt its System from the SDWA requirement to comply with the nitrate MCL.

We notified the city of Pretty Prairie that our agency expects the Pretty Prairie PWS to work with KDHE to take decisive action to come into compliance with the nitrate MCL. Such actions should include, at a minimum, entry into a compliance agreement incorporating an enforceable schedule for the Pretty Prairie PWS to come into compliance with the nitrate MCL.

We suggest that it would be ideal for KDHE to have such an agreement in place with Pretty Prairie by no later than September 30, 2008, absent extenuating circumstances that make such a goal impractical. Such a compliance agreement between Pretty Prairie and KDHE should promote measurable progress towards compliance, via the inclusion of clear milestones, an expected compliance date, and clearly-stated consequences for failure to adhere to the schedule. We also suggest that the agreement should require Pretty Prairie PWS to achieve compliance with the nitrate MCL as soon as reasonably practicable. Please notify EPA once Pretty Prairie has been given measurable milestones and a date to return to compliance with the nitrate MCL.

EPA has reviewed a letter from the city of Pretty Prairie, dated April 16, 2008; as well as a copy of the Consent Order (96-E-0263) that the city of Pretty Prairie entered into with KDHE on October 15, 1996; and a copy of the KDHE Directive sent to the city of Pretty Prairie on July 20, 2007. EPA is willing to partner with KDHE to put an enforcement mechanism in place that will ensure the Pretty Prairie PWS achieves compliance as soon as reasonably practicable in order to protect the consumers of its drinking water system. We both have the goal to resolve the nitrate MCL violations in all drinking water systems in Kansas. Our agency's current priority is the systems with long-term nitrate violations, including the Pretty Prairie PWS.

EPA has advised the city of Pretty Prairie that failure to comply with the requirements of the nitrate MCL, and thereby the SDWA, would lead to an enforcement action by KDHE or EPA. Failure to comply with the SDWA, including timely submission of the plans necessary to implement the recommendations of the feasibility study, may subject the system to an enforcement action brought by KDHE and/or EPA under the authority of the NPDWR and SDWA. If for any reason KDHE does not exercise its enforcement authority in a timely manner, EPA reserves the right to take enforcement action.

We recognize that systems often cite funding shortfalls as a reason for failure to meet one or more requirements of an enforceable compliance schedule. Systems making claims of insufficient funds or economic hardship must take steps, within a compliance schedule, to supply documentation supporting such claims. Failure to seek adequate funding, whether through tax levies, utility rate increases, or submissions of grant proposals, is not adequate justification for failure to meet the terms of an enforcement agreement, compliance schedule, or otherwise fail to show consistent progress towards compliance with the SDWA. Please note that each System's responsibility to come into compliance with the statutory and regulatory requirements of the SDWA does not end with a demonstration of economic hardship.

We encourage you to utilize the resources of the Region 7 Satellite Environmental Finance Center (SEFC), an organization associated with Boise State University which assists local governments with expanding their approach to environmental financing. The SEFC may be able to provide assistance to KDHE to more effectively determine whether Systems have the funds to install treatment, and also to help identify additional funding streams available to Systems. Additional information regarding the SEFC can be found on the internet at <http://efc.boisestate.edu/efc/>.

If you have any questions regarding these issues, please contact Stacie Tucker, of my staff, at (913) 551-7715.

Sincerely,

Diane Huffman, Chief
Water Enforcement Branch
Water, Wetlands and Pesticides Division

bcc: Monica Wurtz, WWPD/DRWM
Robert Dunlevy, WWPD/DRWM

CONCURRENCE:WWPD:WENF:Tucker:H:\WENF\2008 Correspondence\Tucker\ EPA Ltr to KDHE about Pretty Prairie Nitrate Ltr 5.19.08.doc						
NAME	Tucker	Wurtz	Dudding	Mindrup	Huffman	
DIV/ BRANCH	WWPD/ WENF	WWPD/ DRWM	CNSL	WWPD/ DRWM	WWPD/ WENF	
SIGN						
DATE						